



## Health Policy Briefing

March 11, 2013

### House Passes CR Including Flexibility for Defense Department/VA to Modify Sequester

#### Senate to Amend House-Passed FY 2013 CR

Last week the House voted 267-151 to pass H.R. 933, an appropriations continuing resolution (CR), including full appropriations measures for the Department of Defense, \$32.7 billion for health programs, and for Military-Construction/VA programs, which provides \$984 billion to fund federal agencies through September 30th while preserving the \$85.3 billion spending cuts under the sequestration mandated by the Budget Control Act (BCA), including the 2% reduction in Medicare reimbursements. House Democrats were critical of the measure which cuts \$10 million in funding for the Patient Protection and Affordable Care Act's (PPACA) Independent Payment Advisory Board and for state Medicaid performance bonuses while ignoring the Administration's request for \$949 million in additional funding to implement PPACA health insurance exchanges and for \$567 million to reduce health care fraud and to administer Social Security Income (SSI) and disability benefits.

Senate Appropriations Committee Chair **Barbara Mikulski (D-MD)** and the ranking member, Senator **Richard Shelby (R-AL)**, were said to be attempting to craft an alternative

to be released on Monday which would give all federal agencies under sequestration enhanced transfer and reprogramming authority to allow them flexibility to better prioritize the sequester cuts. House **Speaker John Boehner (R-OH)** admonished the Senate to be cautious in making any changes to the House bill that are extraneous, partisan or that would constitute a budget gimmick. However, the Senate bill is also expected to include full appropriations measures already reported by one or more Senate appropriations subcommittees, possibly including the Commerce/Justice/Science bill, but not the Labor/Health and Human Services/Education bill. There is rumbling among some Republican senators that they will oppose the CR if they do not get a vote to delay funding for the PPACA.

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If the House and Senate arrive at a compromise before the spring recess, passage of the CR would serve to avoid a shutdown of the federal government when the current CR expires on March 27th. It is possible that increased program flexibility given agencies under the final CR could alter the effects of sequestration on various health programs as outlined by the Office of Management and Budget (OMB) last week. The Centers for Medicare and Medicaid Services (CMS) also released the payment adjustment changes that would apply to low-volume hospitals and Medicare-dependent hospitals. federal health care spending from continuing to grow faster than the economy over the next 75 years.

### ***Next Budget Debate: FY 2014-2023 Appropriations Levels***

Last week the President met with House Budget Committee Chairman Paul Ryan (R-WI) and ranking member Chris Van Hollen (D-MD), in an attempt to open up a new dialogue with congressional Republicans over FY 2014-2023 federal spending and long-term entitlement reform. While Rep. Ryan said afterward that everyone should be part of an “open debate about how best to balance the budget and expand opportunity”, it remains to be seen how the President will respond to the budget resolution Rep. Ryan is expected to release this week. Shades of prior budget blueprints, the House Republican proposal is expected to balance the budget in ten years by including a so-called Medicare premium support program under which beneficiaries would receive a subsidy to purchase either a private health care plan or a traditional Medicare plan, by block-granting Medicaid and by making cuts to food stamp and social service programs, among other cuts to federal program spending. If last year is a guide, the Republican resolution may also include a full repeal of the PPACA. Noticeably bypassing both House Speaker John Boehner (R-OH) and Senate Minority Leader Mitch McConnell (R-KY) in his talks, the President also dined with a dozen Senate Republicans in an attempt to persuade a critical number of them to join forces with Senate Democrats to resurrect a “grand bargain” to trim future deficits by reducing the cost of health programs and raising revenues by closing tax “loopholes”. The timeframe for reaching such a deal is unlikely to extend much beyond the August recess given that the 2014 election season will make negotiations even more difficult. The President has yet to tip his hand on a budget framework and OMB indicates the Administration’s budget recommendations, likely to be shaped along with Senate Democrats, will likely slide into the second week of April. Another hurdle is looming before May 18 when the current \$14+ trillion ceiling on the public debt expires.

### ***Pandemic Bill Sent to President***

The House and Senate resolved differences on H.R. 307, the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013, and sent the bill to the President for his signature. The legislation will facilitate the development of chemical, biological, radioactive and nuclear (CBRN) medical countermeasures and enhance the response to public health emergencies and disasters, including those caused by CBRN attack; and amends the Public Health Service Act (PHSA) to authorize funding for various Department of Health and Human Services (HHS) agencies to support the readiness of the public health system for such emergencies.

## **PPACA Health Reform Update**

### **House Looks at PPACA Provisions as Part of Tax Code Overhaul**

The House Ways and Means Oversight Subcommittee held a hearing which included testimony on the effects of the PPACA medical device tax and the employer mandate to offer health insurance and other provisions. A home care service owner testified that the employer mandate has led some small businesses to reduce workers’ hours in an effort to get under the 50 full-time employee trigger for the mandate. Democrats and their witnesses said the PPACA tax credits and cost-sharing subsidies will make health insurance more affordable for millions of middle-class families. In related news, a Treasury Department spokesperson said that the final regulations for the “shared responsibility” employer mandate do not have a definite timetable for release, but that employers will be given a period of time to comply after the final rules are promulgated. In other news, House Speaker John Boehner and several other Republicans sent a letter to HHS asking the agency to continue funding under the PPACA for the state high-risk program (PCIP) which in the past has been a preferred alternative to the PPACA for Republicans.

## PPACA Health Reform Update cont.

### *Health Insurance Exchanges Expected to Offer Coverage in October*

**H**HS announced that Iowa, Michigan, New Hampshire and West Virginia will operate so-called State Partnership Marketplaces in cooperation with the federal government bringing the total of such arrangements to seven. Twenty four states and the District of Columbia are on track to operate their own health insurance exchanges under the PPACA. HHS and CMS officials have said that the federal government will be ready to implement federally facilitated exchanges (FfEs) in all other states by the deadline.

### *CCTP Participants Announced*

**C**MS said that 20 new participants will join 82 others under the Community-based Care Transitions Program (CCTP) designed to reduce hospital readmissions and improve the quality of care. Participant agreements under the 5-year PPACA program will run for two years.

## Medicare/Medicaid/PHSA Corner

### *Physician Payments under Medicare*

**T**he Chairman of the House Ways and Means Health Subcommittee, Rep. Kevin Brady (R-TX), has indicated that the efforts of his committee and the House Energy and Commerce Committee to reform the current sustainable growth rate (SGR) physician payment formula should result in legislation that he hopes will be passed before the August congressional recess. House Republicans have previously insisted that the legislation be fully paid-for, but without indicating which programs would be targeted for the spending cuts. OMB recently estimated that the 10-year spending cuts needed would amount to \$138 billion; about \$100 billion lower than under previous estimates. In related news, the Medicare Payment Advisory Commission (MedPAC) announced that their June report to Congress will not include a recommendation equalizing payments between physician offices owned by hospitals and freestanding offices. MedPAC also projected that Medicare spending on evaluation and management visits would increase by \$1.2 billion annually and beneficiary cost sharing by \$310 million by 2021, if the shift away from physician offices to hospitals continues at the current rate.

### *Health IT RFI*

**T**he Office of the National Coordinator for Health Information Technology and CMS have released a request for information on how policy and program changes to the “meaningful use” program and other existing programs could promote interoperability of electronic health record systems, provide incentives to caregivers for participating in health information exchange (HIE) and improve consumer and patient use of their electronic records.

### *GAO Says Medicare Advantage Plans are Overpaid*

**I**n a recent Government Accountability Office (GAO) report, *Medicare Advantage: Substantial Excess Payments Underscore Need for CMS to Improve Accuracy of Risk Score Adjustments*, the agency estimates that Medicare Advantage (MA) plans received excess payments amounting to between \$3.2 billion and \$5.1 billion over 2010-2012. GAO said the excess payments were due to the inaccuracy of the risk scoring system used to pay more to MA plans when MA beneficiary health risks exceed the average risks experienced by traditional Medicare beneficiaries. In the past, Republicans have criticized the cuts in MA payments as scheduled under the PPACA.

## Upcoming Health Hearings

House Budget Committee: “*Mark Up of the Concurrent Resolution On The Budget For Fiscal Year 2014*”, 10:30 a.m., 210 Cannon Bldg, March 13

House Energy and Commerce Health Subcommittee: will hold a hearing titled “*Unaffordable: Impact of Obamacare on Americans’ Health Insurance Premiums*”; 10:00 a.m., 2123 Rayburn Bldg; March 13.

House Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee: will hold hearings on proposed fiscal 2013 appropriations for programs under its jurisdiction; 10:00 a.m., 2358-C Rayburn Bldg; March 13.

## Health Legislation Recently Introduced

**H.R. 940** (REFORM/ABORTION), to amend the Patient Protection and Affordable Care Act to protect rights of conscience with regard to requirements for coverage of specific items and services, to amend the Public Health Service Act to prohibit certain abortion-related discrimination in governmental activities, and for other purposes; BLACK; jointly, to the committees on Energy and Commerce and Ways and Means, March 4.

**H.R. 942** (MEDICARE), to amend Title XVIII of the Social Security Act to provide for coverage and payment for complex rehabilitation technology items under Medicare; CROWLEY; jointly, to the committees on Energy and Commerce and Ways and Means, March 4.

**H.RES. 95** (DISEASE AWARENESS), supporting the goals and ideals of Multiple Sclerosis Awareness Week; LEE of California; to the Committee on Energy and Commerce, March 4.

**S. 452** (MEDICARE), to amend Title XVIII of the Social Security Act to reduce the incidence of diabetes among Medicare beneficiaries; FRANKEN; to the Committee on Finance, March 5.

**S. 466** (DENTAL CARE), to assist low-income individuals in obtaining recommended dental care; MENENDEZ; to the Committee on Health, Education, Labor and Pensions, March 5.

**H.R. 956** (TAXATION), to amend the Internal Revenue Code of 1986 to treat certain amounts paid for physical activity, fitness, and exercise as amounts paid for medical care; KIND; to the Committee on Ways and Means, March 5.

**H.R. 958** (VETERANS' HEALTH), to amend Title 38, U.S. Code, to improve the reproductive assistance provided by the Department of Veterans Affairs to severely wounded, ill, or injured veterans and their spouses, and for other purposes; LARSEN of Washington, jointly, to the committees on Veterans' Affairs, the Budget, and Armed Services, March 5.

**H.R. 962** (MEDICARE), to amend Title XVIII of the Social Security Act to reduce the incidence of diabetes among Medicare beneficiaries; DAVIS of California; jointly, to the committees on Energy and Commerce and Ways and Means, March 5.

**H.R. 963** (DENTAL CARE), to assist low-income individuals in obtaining medically recommended dental care; DEGETTE; to the Committee on Energy and Commerce, March 5.

**H.R. 969** (HEALTH CARE PROVIDERS), to prohibit conditioning licensure of a health care provider upon participation in a health plan; PRICE of Georgia; to the Committee on Energy and Commerce, March 5.

**H.R.973** (TAXATION), to exempt employers from any excise tax and certain suits and penalties in the case of a failure of a group health plan to provide coverage to which an employer objects on the basis of religious belief or moral conviction; SENSENBRENNER; jointly, to the committees on Energy and Commerce, Ways and Means, and Education and the Workforce, March 5.

**S. 468** (MINERS' HEALTH BENEFITS), to protect miners' health care and pension benefits; ROCKEFELLER; to the Committee on Finance, March 6.

**S. 482** (HEALTH INSURANCE PREMIUM RATES), to amend the Public Health Service Act to provide protections for consumers against excessive, unjustified, or unfairly discriminatory increases in premium rates; FEINSTEIN; to the Committee on Health, Education, Labor and Pensions, March 6.

**H.R. 980** (MINER'S HEALTH BENEFITS), to protect miners' health care and pension benefits; RAHALL; jointly, to the committees on Ways and Means and Natural Resources, March 6.

**H.R. 986** (MEDICARE), to amend Title XVIII of the Social Security Act to ensure the eligibility of professionals practicing in rural health clinics for electronic health records and quality improvement incentives under Medicare, and for other purposes; SCHOCK; jointly, to the committees on Energy and Commerce and Ways and Means, March 6.

## Health Legislation Recently Introduced cont.

**H.R. 991** (MEDICARE), to amend Title XVIII of the Social Security Act to cover screening computed tomography colonography as a colorectal cancer screening test under Medicare; HALL; jointly, to the committees on Energy and Commerce and Ways and Means, March 6.

**H.R. 1005** (REFORM), to de-authorize appropriation of funds, and to rescind unobligated appropriations, to carry out the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010; GRAVES of Georgia; jointly, to the committees on Energy and Commerce, Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, and House Administration, March 6.

**H.R. 1007** (CHILDREN'S HEALTH), to amend Part D of Title V of the Elementary and Secondary Education Act of 1965 to provide grants to schools for the development of asthma management plans and the purchase of asthma medications and devices for emergency use, as necessary; GRIMM; to the Committee on Education and the Workforce, March 6.

**H.R. 1015** (MEDICARE), to require the commissioner of Social Security to revise the medical and evaluation criteria for determining disability in a person diagnosed with Huntington's disease and to waive the 24-month waiting period for Medicare eligibility for individuals disabled by Huntington's disease; PASCHELL; to the Committee on Ways and Means, March 6.

**H.R. 1019** (HEALTH INSURANCE PREMIUM RATES), to amend the Public Health Service Act to provide protections for consumers against excessive, unjustified, or unfairly discriminatory increases in premium rates; SCHAKOWSKY; to the Committee on Energy and Commerce, March 6.

**S. 499** (REFORM), to repeal the Patient Protection and Affordable Care Act; VITTER; to the Committee on Finance, March 7.

**S. 501** (FIRST RESPONDERS), to amend the Internal Revenue Code of 1986 to extend and increase the exclusion for benefits provided to volunteer firefighters and emergency medical responders; SCHUMER; to the Committee on Finance, March 7.

**S. 504** (GENERIC DRUGS), to amend the Federal Food, Drug, and Cosmetic Act to ensure that valid generic drugs may enter the market; FRANKEN; to the Committee on Health, Education, Labor, and Pensions, March 7.

**H.R. 1024** (MEDICARE), to amend Title XVIII of the Social Security Act to provide Part D eligible individuals with single chronic diseases access to services under medication therapy management programs under the Medicare Part D prescription drug program; MCMORRIS RODGERS; jointly, to the committees on Energy and Commerce and Ways and Means, March 7.

**H.R. 1030** (MEDICARE), to require establishment of a Consumer Price Index for Elderly Consumers to compute cost-of-living increases for Social Security and Medicare benefits under titles II and XVIII of the Social Security Act; DEFAZIO; jointly, to the committees on Ways and Means, Energy and Commerce, and Education and the Workforce, March 7.

**H.R. 1037** (NATIONAL HEALTH SERVICE CORPS), to amend the Public Health Service Act to include occupational therapists as behavioral and mental health professionals for purposes of the National Health Service Corps; TONKO; to the Committee on Energy and Commerce, March 7.